

Review of the Contract Rights Renewal Undertakings: Executive Summary

OFT Advice to the Competition Commission

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Executive Summary

- 1.1 The Contract Rights Renewal remedy was applied to the sale of advertising on ITV1 in 2003 as a precondition for permitting the proposed merger of Carlton and Granada. It was part of a package of undertakings designed to alleviate concerns that the Competition Commission had about the merger.
- 1.2 In January 2009, following our initial review of the CRR remedy which was conducted with the assistance of Ofcom, we published a consultation document which set out our preliminary view that it was now appropriate that the Competition Commission vary the remedy.
- 1.3 In the five years since the remedy has been in place, ITV1 has lost market share. In our consultation document we put forward a preliminary view that, compared to 2003, there are more advertising campaigns which can now achieve their objectives without relying on ITV1. We proposed that it is likely that this increased substitutability with other channels has, to some extent, reduced the potential adverse effects of the merger.
- 1.4 We also said that, despite the changes in the market, it was possible that at least some of the concerns expressed by the Competition Commission persisted. We noted that ITV1 still supplies the vast majority of mass audience programming on commercial television and some advertisers, in particular those which require fast coverage in a short space of time, may not be able to meet their objectives without it.
- 1.5 In our consultation document, we suggested that it may be appropriate to ease CRR if a remedy could be found that effectively addressed any remaining detriments arising from the merger. We proposed that one such easement could be to remove the requirement that ITV1 rolls over contracts but retain some safeguards to prevent ITV from discriminating against those advertisers which still heavily rely on ITV1. We put forward a number of potential safeguards, and invited views and alternatives to the proposition.

- 1.6 The consultation document also suggested that it may be appropriate to remit the matter to the Competition Commission because there had been changes in the way that the ITV1 programme schedule was delivered. This included the development of a High Definition channel and a potential time shifted (+ 1) channel. These channels are not currently included in the relevant definitions of ITV1. Neither is the ITV1 channel which is delivered over cable or satellite. We expressed a view that, if the CRR remedy is retained in any form, it should cover all methods of delivering the ITV1 programme schedule. This issue is quite separate from those relating to ITV1's market position.

Stakeholder Responses to the Consultation Document

- 1.7 The vast majority of stakeholders, including ITV, agreed with our suggestion in the consultation document that, if CRR was retained, the remedy should be amended to include all methods of delivering the ITV1 programme schedule.
- 1.8 There was much less agreement with the preliminary view we put forward in relation to ITV1's market position. Stakeholders raised issues with the quality of the available evidence about the decline in ITV's market share and provided some further arguments and evidence to support their view that ITV1 remains necessary because the channel still puts out the vast majority of mass audience programming. They told us this means that advertisers remain dependent on ITV1 for reaching large audiences in a short space of time. Some stakeholders also believed that mass audiences – or ITV1's audiences in general – are of a particularly high quality because the viewers are more attentive or have other valuable characteristics.
- 1.9 Many stakeholders also argued that the position of ITV's digital channels was relevant. They said that, without CRR, ITV would negotiate across all of its channels simultaneously. This would further enhance its ability to extract extra revenue from media buyers, increasing prices on all of its channels, including ITV1. They did not believe that the current conditional selling rules would be effective in preventing such behaviour.

- 1.10 Most stakeholders said that the proposed safeguards against price discrimination would not provide adequate protection, as ITV would not need to target individual advertisers to increase its revenue. Rather, it would insist on terms that were generally less attractive to advertisers and media buyers. Few alternative easements were suggested. Most stakeholders believe that it is most appropriate for CRR to stay in place with only minor adjustments to account for the definition of ITV1.
- 1.11 ITV, on the other hand, provided further evidence and arguments that ITV1 no longer has any of the unique features which gave rise to the Competition Commission's concerns. It maintained that fast mass coverage could be attained using a combination of other channels and that ITV1 does not have any other advantages in terms of better quality impacts. It argued that the remedy should therefore be fully removed without delay and without any safeguards being needed.

Updated Findings

- 1.12 With Ofcom's assistance, we have considered the further evidence and arguments put to us in response to our consultation. The evidence remains difficult to assess. ITV1 has put forward a large volume of evidence supporting its position, but this evidence does not fully prove its arguments. Other stakeholders put forward further evidence to support the position that CRR remains necessary, but this evidence also has weaknesses.
- 1.13 Overall, we believe it remains possible that, without CRR, ITV1's negotiating power would be such that it would be able to extract more revenue from media buyers. This may be achieved even without targeting specific advertisers, so safeguards against price discrimination may not be sufficient. The ability to increase revenue derives from ITV1's position in the supply of mass audiences. It is not clear that ITV1 has any unique advantages over and above this.
- 1.14 Nevertheless, we believe circumstances have changed since 2003, and ITV1's market position does appear to have eroded to

some extent. This may mean that a less burdensome remedy may effectively address the remaining concerns. Such a remedy could, for example, be more explicitly targeted at ITV1's position in the supply of mass audiences.

- 1.15 Some stakeholders requested that a market investigation reference should be launched into the sale of TV advertising. In most cases, the requests related to the wider market position of ITV plc as opposed to ITV1. We consider that Ofcom would be best placed to consider whether a market investigation reference is appropriate. Pending the outcome of the CRR Review, Ofcom has indicated that it does not consider it appropriate to open a market investigation at this time.

Recommendation to the CC

- 1.16 The OFT remains of the view, endorsed by most respondents, that it is necessary to remit this matter to the Competition Commission in order to amend the definition of ITV1 in the remedy to take account of various ways in which the programme schedule is delivered.
- 1.17 We recommend that the Competition Commission should also consider whether the decline in ITV1's market position means that it is now possible to find a more proportionate remedy, which creates less costs and distortions than CRR but would nevertheless address any remaining detrimental effects of the merger arising from ITV1's unique position in the supply of mass audiences.